IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3356 OF 1994

The Chief Officer,
Zilla Parishad, Solapur & Anr. .. Petitioners.

V/s.

Sudhir Laxmikant Kharosekar .. Respondent.

Shri.Nitin Jamdar for the petitioners.
Shri.V.R.Kulkarni for the respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 14TH MARCH, 2007.

P.C.:

1. By the present Writ Petition, the petitioner-Zilla Parishad, Solapur takes exception to the judgement and order dated 28th June, 1994, passed by the Industrial Court, Solapur allowing U.L.P. Complaint No.370 of 1991 filed by the respondent. The respondent was appointed as Livestock Supervisor with the petitioners by an order dated 10th November, 1990. The appointment order clearly mentions that the respondent is appointed temporarily for

a period of six months or till such time that a candidate is made available by the Subordinate Selection Board. It is categorically stated in the appointment order that on a candidate becoming available for a substantive and regular appointment, the respondent's service shall stand terminated and he shall not have any right to the post. After the expiry of period of six months, the respondent was discontinued from the service and thereafter, again an order of appointment appointing the respondent for two months on the same terms and conditions, was issued and the last order in the chain of three appointment orders was for a period of four months, yet, again subject to availability of a regular candidate selected by the Subordinate Selection Board.

2. Apprehending termination on expiry of period of four months under the last order of appointment, the respondent filed the complaint before the Industrial Court contending that the present petitioners have committed unfair labour practice in giving artificial break and continuing the complainant on temporary basis though a permanent post exists. The learned counsel for the petitioners state that the post in question is a Class-III post and the candidate to be appointed was to be selected by the Subordinate Selection Board. Initially, allowing

an application moved by the respondent claiming interim relief, the Industrial Court directed that the complainant be continued until a candidate selected by the Subordinate Selection Board is available for being appointed in the post in question in terms of the contract. On availability of the selected candidate, the petitioners terminated the respondent from service. The respondent on being served with the termination order, applied for amendment of the complaint and questioned the legality and validity of action of termination. The respondent had contended before the Industrial Court that he had completed 240 days of service with the petitioners in the year preceding the termination and hence he was entitled to a notice and retrenchment compensation and for want of which, it was contended that action of termination was in breach of Sec.25(F) of the I.D. Act and, thus, amount to unfair labour practices covered by Item 9 of Sch.4 of M.R.T.U. & P.U.L.P.Act. The Industrial Court, accepting the contention raised by the respondent held that as the petitioner has failed to comply with the Sec.25(F), the termination of the respondent amounts to unfair labour practice under Item 9 and hence directed reinstatement with full back wages.

3. Aggrieved by the judgement and order passed by the

Industrial Court, the present writ petition has been filed by the petitioners. At this stage, it may be noted that this Court had granted interim relief to the petitioners and on account of that, order of the Industrial Court has not been implemented. The respondent is, thus, not in service.

4. The learned counsel for the petitioners has submitted that as the termination of the respondent was in accordance with the terms of the contract of appointment, the case is squarely covered by Sec.2(oo) (bb) of the I.D.Act. Retrenchment has been defined under Sub Sec.(oo). What is specifically excluded from the definition of retrenchment is stipulated in Sub Sec.(bb) which reads thus : -

> "[(bb): termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

5. The learned counsel has submitted that immediately on a candidate being made available by the Subordinate

Selection Board for regular appointment in the post of Livestock Supervisor, the ad-hoc arrangement was brought to an end by terminating the respondent from the service. It is contended that one of the stipulations in the contract of appointment order was that the respondent was to be continued in service until a candidate duly selected by the Subordinate Selection Board is available for maning the post. It is undisputed and it is so revealed from the record that the petitioners have terminated the service of the respondent immediately when a candidate was made available for maning the post. If this be so, submits the learned counsel, then, there is no question of non-compliance of Sec.25(F) as there is no retrenchment. The present situation, according to the petitioners, is covered by the specific exclusion under Sec.2 (oo) (bb). The learned counsel for the petitioners has placed reliance on the judgement of the Supreme Court reported in (2006) 1 S.C.C. 121. In the said judgement, the appointment of the employee was for a specific period and conditional one, which resembles with the stipulation in the present case The employee was discontinued and the Apex Court has held that such a discontinuation, on availability of a regularly selected candidate is effected under the stipulation of the contract in the appointment order, hence it does not amount to retrenchment and same

is covered by Sec.2 (oo) (bb) of the I.D. Act.

6. I agree with the submissions made by the learned counsel for the petitioners that in the facts of the present case, there was no requirement of law to comply with the provisions of Sec.25(F). Hence, obviously, there cannot be unfair labour practices under Item 9. The judgement and order passed by the Industrial Court being unsustainable, deserves to be quashed and set aside.

7. In the result, the writ petition is allowed. The impugned order passed by the Industrial Court is quashed and set aside. Rule is made absolute in the above terms with no order as to costs.

(A.P. Deshpande, J.)